

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GAVIN AWERBUCH, M.D.,

Defendant.

HONORABLE ARTHUR J. TARNOW

No. 16-20636

SENTENCING HEARING

Monday, February 26, 2018

Appearances:

FOR THE PLAINTIFF:

JOHN K. NEAL, ESQ.

PHILIP A. ROSS, ESQ.

FOR THE DEFENDANT:

MARK J. KRIGER, ESQ.

LAWRENCE H. BRENNER, ESQ.

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Detroit, Michigan

Monday, February 26, 2018

2:00 p.m.

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THE COURT CLERK: The court calls case number 16-20636, United States of America versus Gavin Awerbuch. Will counsel please identify themselves for the record?

MR. NEAL: Good afternoon, your Honor. John Neal appearing on behalf of the United States.

MR. ROSS: Philip Ross, forfeiture counsel, for the United States.

MR. KRIGER: Mark Kriger for Doctor Awerbuch.

MR. BRENNER: Larry Brenner on behalf of Doctor Awerbuch.

THE COURT: Is Doctor Awerbuch here? Please, approach the lecturn with your attorney or attorneys. To all of you, good afternoon. And to all of you in the audience, welcome. Now, you remember you are under oath.

THE DEFENDANT: Yes, your Honor.

THE COURT: Okay. Remember what I told us at the time of the plea, that is, if I talk too fast or I mumble or you don't understand what I am saying, stop me. Obviously this is an important day in your life, extraordinarily important day. And so it's important you know what is going on. I note that you are on bond, is that correct?

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1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Which means I will ask you in the last 12
3 hours have you had any alcohol, prescription drugs, or other
4 drugs that would make it hard for you to understand what I am
5 saying?

6 **THE DEFENDANT:** No.

7 **THE COURT:** Is there any reason you can think of that
8 we should not proceed today?

9 **THE DEFENDANT:** No.

10 **THE COURT:** What is the procedure today?

11 **THE DEFENDANT:** My sentencing.

12 **THE COURT:** Okay. You read your Presentence Report?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** You discussed it with one or both of your
15 attorneys?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** And you are satisfied with legal counsel
18 to date?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Do you have any questions about what is
21 going to happen today other than what the ultimate sentence is
22 going to be? Procedurally, do you have any questions?

23 **THE DEFENDANT:** No, I don't.

24 **THE COURT:** Okay. I will tell you the way it's going
25 to work. I am going to ask, first, both attorneys whether they

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1 agree with the calculation of the Presentence Report writer
2 which is in the Presentence Report. Then I will ask them to
3 basically summarize what their memo said and what ultimately is
4 their final recommendation. And then it will be your turn.
5 What you say or don't say is very important. If you don't say
6 anything, that's your right. You have a Fifth Amendment right
7 to remain silent. Do you understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** And that includes all these questions I
10 asked. If you forgot you had the right and you didn't want to
11 answer them, tell me now.

12 **THE DEFENDANT:** No. I am happy to answer them.

13 **THE COURT:** All right. I'm going to proceed slightly
14 differently this time. I am going to ask to hear from the
15 forfeiture attorney in terms of -- let's get that done with so
16 you are not mumbling and I am not mumbling as everybody is
17 reacting to the sentence.

18 **MR. ROSS:** Thank you, your Honor.

19 **THE COURT:** Please identify yourself again for the
20 record.

21 **MR. ROSS:** Philip Ross with respect to forfeiture.

22 **THE COURT:** Go ahead.

23 **MR. ROSS:** Yes, your Honor. The parties have entered
24 into a Stipulated Preliminary Order of Forfeiture that follows
25 the forfeiture terms that were included in the defendant's Rule

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1 11 Plea Agreement in which the defendant agreed to forfeit
2 \$4.1 million to the United States. In return, the Government
3 has agreed to dismiss two civil forfeiture actions that are
4 both pending in front of Judge Ludington. At such time the
5 defendant completes his payment of the \$4.1 million to the
6 United States, the Government is going to recommend and has
7 actually made a preliminary recommendation to the United States
8 Justice Department in Washington to remit \$3.1 million which is
9 effectively the amount of restitution this Court is going to
10 order against the defendant according to the Rule 11 Agreement
11 or I am going to ask the Justice Department apply \$3.1 million
12 of the 4.1 million that he forfeits to his restitution. He
13 will have a \$1 million forfeiture on top of affectively the
14 \$3.1 million forfeiture and restitution that will be completed.

15 **THE COURT:** The copy that was just handed to me
16 called Stipulated Preliminary Order of Forfeiture is not signed
17 by defense counsel or the defendant. Is there another copy?

18 **MR. ROSS:** Your Honor, I'm holding the signed copy
19 and I believe your clerk would prefer that I submit the signed
20 copy electronically when I return to my office.

21 **THE COURT:** Okay. Do you want to include my
22 signature on that or I can sign this one?

23 **MR. NEAL:** We would ask that the Court sign the copy
24 after we submit it electronically to your Honor unless your
25 clerk has a different --

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1 **THE COURT:** That's fine.

2 **MR. ROSS:** Mr. Kriger, I believe that concludes -- I
3 should say that the Government would request that the
4 forfeiture language be included in the Judgment and we will
5 provide that language to the Probation Department for
6 preparation in the Judgment. Mr. Kriger, I believe that
7 concludes the terms of the forfeiture agreement.

8 **MR. KRIGER:** That's correct, your Honor.

9 **THE COURT:** Okay. And you attest that you already
10 signed it and your client signed the copy that the Prosecutor
11 has?

12 **MR. KRIGER:** Yes.

13 **THE COURT:** All right. You're done. Thank you.

14 **MR. ROSS:** All right. Thank you, your Honor.

15 **THE COURT:** All right. Just to review, it's my
16 understanding that the amount of money attributable to the
17 defendant has been repaid. Is that correct, Mr. Kriger?

18 **MR. KRIGER:** I'm sorry?

19 **THE COURT:** The amount of money, his share of the
20 conspiracy, while he might be technically liable for the total
21 amount of the conspiracy, these monies, and as I understand
22 they are represented by a coin collection and the house?

23 **MR. KRIGER:** It's not a conspiracy, your Honor. It's
24 just he is the only defendant on the forfeiture. But we have
25 at this stage in my client trust account we have over a million

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1 dollars. We hoped to have it all paid by today but I have been
2 in constant contact with Mr. Ross and we anticipate certainly
3 no later than October and hopefully by June the entire amount
4 will be paid. The coin collection is the main asset that we
5 are using to pay and it's being -- there is --

6 **THE COURT:** I don't need to need all of the details.

7 **MR. KRIGER:** He has been selling it as time goes on.

8 **THE COURT:** And it's guaranteed the proceeds from
9 those sales will continue to go to the forfeiture.

10 **MR. KRIGER:** That's correct.

11 **THE COURT:** And my only question is, why do you have
12 money in your trust account that could be given to the
13 Government to reimburse?

14 **MR. ROSS:** Your Honor, if I may answer that.
15 Mr. Kriger and I will be submitting today or tomorrow a
16 stipulation asking this Court to order the United States
17 Marshal to accept that \$1 million or approximately \$1 million.
18 The marshals need an Order from the Court before they are
19 permitted to accept the million dollars.

20 **THE COURT:** Anyone in the audience want to accept the
21 million dollars? Okay. That sounds fair enough. And I can
22 wait a day to sign that Order.

23 **MR. ROSS:** Thank you, Judge.

24 **THE COURT:** But I don't expect it to get that big
25 again, the trust account. Can the Order say that any and all

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1 proceeds as they come in can be accepted by the marshal?

2 **MR. KRIGER:** We can do that but the way it's been
3 working is the fella who is responsible for the sale of the
4 coins has just been wiring the money. As soon as I get it I
5 let Mr. Ross know that I have gotten this money and I can remit
6 it virtually the next day.

7 **MR. ROSS:** I think the marshals actually are going TO
8 require an Order each time with the specific amount. So
9 perhaps each time Mr. Kriger receives a wire he can contact me
10 and I will prepare the stipulation so that that money is
11 directly sent to the United States Marshal.

12 **THE COURT:** Thank you.

13 **MR. ROSS:** Thank you, Judge.

14 **MR. KRIGER:** Plus the State Bar gets the interest on
15 it.

16 **THE COURT:** Interest on business accounts are now
17 .01 percent. I bet you everybody in the audience knew that as
18 well as everyone at the Bar.

19 All right. Let me look at the Presentence Report and my
20 notes. All right. The Presentence Report conclusions as to
21 guidelines, and for those if the audience, guidelines are
22 exactly what they say they are. They are guidelines that help
23 the Judge i.e., me, to come to a conclusion as to an
24 appropriate sentence. And they came out to Category One which
25 reflects this is the defendant's first felony conviction. And

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1 a level 27 which reflects a number of factors including the
2 amount of money involved, the length of time that the defendant
3 was involved in this fraud, the seriousness of the offense
4 charged and a lot of other variables. And it came out to level
5 27. And there is a table, a reference table that says when you
6 have Level 27 and Category One, the guideline range is 70
7 months which is a little bit less than six years to 87 months
8 which is three months longer than seven years.

9 And the courts tell me that this is a starting place to
10 then apply what are called the congressional factors which I
11 will go through at length in a few minutes. But before I do
12 that I want to hear from the Government as to, do you agree
13 with the calculation?

14 **MR. NEAL:** I do, your Honor.

15 **THE COURT:** Defense?

16 **MR. KRIGER:** I do, your Honor.

17 **THE COURT:** Okay. So we are all starting at the same
18 place. It used to be easier for the Judge when the guidelines
19 are almost mandatory because it limited my discretion to, in
20 this case, it would have been about a year and a half window.
21 However, while it is a calculation and it made it hard to
22 depart from it, it didn't make me sleep better at night because
23 any formulation for sentencing is going to result in the
24 exercise of discretion at all different levels. And when you
25 have discretion like a Judge has or the Prosecutor and the

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1 investigating officers have when they are investigating the
2 case and bringing the charges or the defense attorney has when
3 they are negotiating as in this case, a plea, it means there is
4 some arbitrariness to it. There is no correct or right answer.

5 And then when it gets to the Judge, the Judge has the same
6 kind of discretion. And ultimately I have to decide. And it
7 makes it harder for me to figure on the correct or what I think
8 is the right sentence. And then the old system -- but I sleep
9 better at night because I made an effort to fit the crime, the
10 participation of the defendant, the background of the defendant
11 and all the variables I will be talking about in a couple of
12 minutes. And nobody tells us or gives us any guidance on which
13 factor is more important.

14 And the reason you get different sentences for different
15 people, there are several reasons. One is everybody is
16 different in their involvement in crime and the nature of the
17 crime. And, two, every Judge is different in terms of our
18 backgrounds. And therefore we come at it differently. And the
19 alternative would be to go back, not only having almost
20 mandatory guidelines but make them mandatory and the problem
21 with that is not everybody is the same and variables are too
22 many and what you would be doing is replacing Judges at all the
23 other levels with robots. And it could save money, but it
24 would cause all sorts of unfairness and inequity. So that is a
25 preview of what I have to do.

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1 I want to hear from the Government as to what your
2 recommendation is and why and just summarize your Sentencing
3 Memorandum if you will.

4 **MR. NEAL:** Certainly, your Honor. As a starting
5 place I would like to make a motion pursuant to Section 5K1.1
6 of the United States Sentencing Guidelines. That is a motion
7 for a downward departure based on Defendant Awerbuch's
8 cooperation. The cooperation was spelled out in the Sentencing
9 Memorandum. This is cooperation that involves a physician who
10 is named in the sealed Sentencing Memorandum here in Detroit
11 that Doctor Awerbuch has cooperated against. So that is where
12 I will begin. I am asking for a below guideline sentence based
13 on that cooperation.

14 The sentence that we are recommending is one of 52 months
15 incarceration. And we came to that number after evaluating a
16 number of the most pertinent of the congressional factors that
17 you referenced earlier.

18 Starting with the nature and circumstances of the offense.
19 Your Honor, the nature and circumstances of the offense here
20 are extremely serious. Doctor Awerbuch received financial
21 benefits from a drug manufacturer that made a particularly
22 powerful opiate painkiller known as Subsys and Doctor Awerbuch
23 prescribed Subsys at a rate that was truly staggering during
24 the period from approximately January of 2013 through his
25 arrest in May of 2014. Doctor Awerbuch prescribed some

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1 \$6.9 million worth of that drug to Medicare beneficiaries.
2 That was far and away the leading -- strike that. Doctor
3 Awerbuch's prescriptions to Medicare beneficiaries for this
4 drug represented approximately 20 percent of the total Subsys
5 prescriptions for Medicare beneficiaries during that time
6 frame. He was far and away the leading physician in the country
7 for writing prescriptions for that drug during that time frame.

8 **THE COURT:** What was the time frame?

9 **MR. NEAL:** From approximately January of 2013 through
10 his arrest in May of 2014. Doctor Awerbuch was also involved
11 in a separate fraud scheme during the same time period and that
12 fraud scheme dated back much earlier, from approximately 2009
13 through his arrest in May of 2014. Doctor Awerbuch was engaged
14 in a scheme to bill Medicare and other insurers for unnecessary
15 needle EMG tests and other nerve conduction tests. Doctor
16 Awerbuch profited considerably from that practice and in total
17 cost the Medicare and Blue Cross programs over \$3 million of
18 medically unnecessary tests associated with nerve reduction
19 studies. So I think by any account, the nature and
20 circumstances of the offense here are quite serious.

21 Another of the congressional factors is the history and
22 characteristics of the offender. And the Government laid this
23 out in our Sentencing Memorandum. But I think the history and
24 characteristics of the offender are quite mixed. There are
25 some aspects of Doctor Awerbuch's history and characteristics

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1 which go to his credit. Doctor Awerbuch has a loving and
2 supportive family. You saw a number of the letters that were
3 submitted by patients that worked with Doctor Awerbuch and many
4 of those letters were glowing about the care they received from
5 Doctor Awerbuch over the years. Clearly this is a man who has
6 done good in his personal and professional life.

7 By the same token, there is -- there are aspects of Doctor
8 Awerbuch's history and characteristics that are much less
9 attractive. Doctor Awerbuch did not need to do this. Doctor
10 Awerbuch had a successful practice. Doctor Awerbuch had a
11 successful life. Doctor Awerbuch was already a wealthy and
12 prominent physician. There was absolutely no need for Doctor
13 Awerbuch to accept kickbacks from the drug manufacturer in
14 order to prescribe a drug on occasion unnecessarily. Doctor
15 Awerbuch did not need to engage in fraudulent needle EMG and
16 another nerve conduction studies in order to profit himself.
17 Doctor Awerbuch was already a wealthy man and his greed caused
18 him to commit crime to become even wealthier.

19 **THE COURT:** Did the people who gave the kickbacks,
20 are they being prosecuted?

21 **MR. NEAL:** There is a prosecution in the District of
22 Massachusetts involving a number of executives from that
23 company that is ongoing. I believe that is scheduled for trial
24 in January of 2019.

25 **THE COURT:** Including the owner?

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1 **MR. NEAL:** Judge, I am not familiar with all the
2 details of that prosecution. But I know it exists.

3 **THE COURT:** It is a first that I have been made aware
4 of in my 20 years here of truly in the drug oversupply,
5 overbilling Medicare Medicaid fraud area where they have gone
6 after the other people who are equally greedy and probably
7 should know better than even a doctor in terms of the side
8 effects of opioids. And I am pleased to hear that -- doubly
9 pleased because it's not my case, that it has been prosecuted
10 in Boston for the people who were involved. This defendant
11 should have known better. They should have known more better
12 if there is such a phrase. And continue.

13 **MR. NEAL:** Judge, another of the congressional
14 factors is the need to provide just punishment for the offense.
15 And the Government laid this out in our Sentencing Memo. This
16 is an offense that should carry a significant period of
17 incarceration with it. Subsys is a very powerful Fentanyl
18 spray, a very powerful opioid. In fact, the risk of abuse of
19 this drug is so significant that before prescribers can
20 prescribe the drug they have to enter a special program that is
21 run by the Food and Drug Administration and that requires all
22 manner of provider education about the seriousness and the
23 risks associated with this drug.

24 Doctor Awerbuch enrolled in that program. Doctor Awerbuch
25 was aware of the significant risks associated with this drug,

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1 yet he still prescribed it unnecessarily for money. And that
2 is a very serious offense. That is an offense that I think in
3 order to -- in order for justice to be done this is an offense
4 that should carry a very significant penal consequence and that
5 is what the Government is asking for here.

6 Finally, the last factor we focused on was the need for
7 deterrence, both general and specific. As we laid out in the
8 memo, I don't believe that specific deterrence is a great
9 important consideration here. Doctor Awerbuch will no longer
10 be practicing medicine. His opportunity to engage in fraud of
11 this sort will be limited.

12 **THE COURT:** Does he still have his license?

13 **MR. NEAL:** It has not been renewed and the plan is
14 to -- for that to be surrendered as soon as sentence is
15 imposed.

16 **THE COURT:** Is that part of the sentencing Order or
17 is that -- Mr. Kriger, do you know?

18 **MR. KRIGER:** No, Judge. Your Honor, he is required
19 by law to notify licensing once he is sentenced that he has
20 been sanctioned. He did not renew his license which was up for
21 renewal several months ago. And I plan on notifying the
22 Licensing Board. He would -- and I am going to speak about
23 this in the future -- like to do voluntary work if he ever gets
24 his license back. But that is certainly very iffy.

25 **THE COURT:** Okay. Continue.

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1 **MR. NEAL:** Turning to general deterrence, I think
2 general deterrence is a bigger consideration in fashioning a
3 sentence here. Unfortunately, health care fraud is an epidemic
4 in this jurisdiction as well as nationally. The fact we have a
5 physician who engaged in this misconduct, \$3 million in
6 fraudulent billings, numerous prescriptions for substances that
7 were written without medical necessity, it would send a
8 laudable message to the community if Doctor Awerbuch was given
9 a significant period of incarceration based on the nature and
10 circumstances of his offense. And that would hopefully deter
11 others from engaging in similar conduct in the future. I think
12 weighing all these different considerations, the Government
13 submits that a sentence of 52 months incarceration would be
14 appropriate for this offender.

15 **THE COURT:** Thank you.

16 **MR. KRIGER:** Your Honor, I would like to speak as my
17 co-counsel would, but I would like to address some issues
18 first.

19 Your Honor, I have gotten to know Doctor Awerbuch really
20 well. I have been living with Doctor Awerbuch since 2014. At
21 his core, he is a decent, compassionate human being despite the
22 conduct that has brought him before this Court.

23 **THE COURT:** Does that make it better or worse for him
24 now?

25 **MR. KRIGER:** I am hoping it makes it better.

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1 **THE COURT:** He knew better.

2 **MR. KRIGER:** Pardon?

3 **THE COURT:** He knew better. He was a decent human
4 being.

5 **MR. KRIGER:** He did know better and he took immediate
6 responsibility for what he did. Before we had a single page of
7 discovery, a single page discovery, the day he was brought in
8 on the complaint, Mr. Neal came up to me and said we would like
9 his cooperation. And that day he agreed to do it and met with
10 the agents.

11 **THE COURT:** He didn't do it the day before he was
12 caught, did he?

13 **MR. KRIGER:** He did not.

14 **THE COURT:** Okay. Go on.

15 **MR. KRIGER:** Your Honor, we have an audience of --
16 packed, and virtually 70 percent of these people are patients.
17 I trust that the Court had an opportunity as long as it was to
18 read the letters from these patients.

19 **THE COURT:** I had the opportunity but not the time.
20 I looked at some. But I believe they were filed about ten days
21 ago.

22 **MR. KRIGER:** Ten days ago.

23 **THE COURT:** Yeah.

24 **MR. KRIGER:** There were literally hundreds of letters
25 from patients that are more remarkable than any letters I have

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1 had since I have been practicing law. In addition to the
2 letters from the patients, and I don't know if the Court had an
3 opportunity to read these, we had letters from people where he
4 did volunteer work. Not volunteer work that he started after
5 he got in trouble, but volunteer work since he has been a young
6 man at Michigan State. He took care of a quadraplegic, fed
7 him, everyday attended to him. To a blind student.

8 **THE COURT:** What is his specialty?

9 **MR. KRIGER:** He's a neurologist, your Honor.

10 **THE COURT:** Okay.

11 **MR. KRIGER:** He then, while he was in medical school,
12 volunteered with the Muscular Dystrophy Society. Continued
13 that when he was practicing medicine. He also volunteered at
14 Camp Tamarack, one after another. He worked for a clinic in
15 Pontiac in 2010 well before he was under the Government's radar
16 where he treated indigents. He worked in a clinic in Detroit
17 where he treated indigents and then not only did he --

18 **THE COURT:** What hospital was he associated with?

19 **THE DEFENDANT:** Up in Saginaw, St. Mary's Hospital in
20 Saginaw General Hospital.

21 **THE COURT:** Thank you.

22 **MR. KRIGER:** And then took whatever little he earned
23 because there was some insurance and he donated that to buy
24 school supplies for children, volunteered to coach basketball
25 for the very same children. He also brought other physicians

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1 to do volunteer work.

2 I have represented a number of doctors over the years and
3 I have never, save maybe one case, seen the testimonials that I
4 have seen in this case. And there was -- when he was arrested
5 on the Complaint, his patients actually held a vigil in support
6 of him. And, again, most of the people that are here today are
7 his former patients.

8 He has certainly much to be ashamed of but he has much to
9 be proud of. The substance that was prescribed which he takes
10 full responsibility for, was given to us in 2 percent of his
11 patients. The EMGs, I think the volume of EMGs is a bit
12 misleading because he also did EMGs and read other EMGs for
13 other doctors and that is what caused the large amount of
14 billings.

15 One of the things that I did, your Honor, was, and I think
16 this is an important consideration in determining the
17 appropriate sentence, is similar sentences, sentences for
18 people similarly situated. And I hired a company, MCM Data who
19 did an analysis of everyone whose guidelines were based both on
20 drug offenses and health care fraud. Doctor Awerbuch had a 27
21 month, I'm sorry, 27 level increase if his guidelines for the
22 drug offense. There were 18 defendants with that 28 level.
23 There was nobody with 27. The average sentence was 4.5 months,
24 and this is with a 5K for cooperation, and the median was
25 probation. There was one defendant that actually had a 27

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1 Offense Level increase for both guidelines based on health care
2 fraud and on controlled substances and that person got 27
3 months with a 5K. There was one defendant that had a 26
4 Offense Level increase and that person got one day. And there
5 were 17 defendants that had a 25 -- had a level 25 Offense
6 Level and that average was 4.1 months and a median of
7 probation.

8 **THE COURT:** What pool of people were you looking at?

9 **MR. KRIGER:** Nationwide.

10 **THE COURT:** Okay.

11 **MR. KRIGER:** Nationwide. So how did I arrive at 20
12 months? That sentence that I requested is significantly over
13 what the national median and average is for admittedly a small
14 sample, but considerably more.

15 One of the things that I think is important to talk about
16 here is the 5K. It is not unusual in this district to have a
17 requested decrease of 40 to 50 percent based on cooperation in
18 a single case. That's not what is happening here. We have a
19 25 -- we have a 25 percent reduction request which would put
20 him down to 52 months. But the fact that he may get one down
21 the road in any other case is really irrelevant to what this
22 Court should sentence him today because the Sixth Circuit has
23 said that can't be considered.

24 **THE COURT:** I missed that point. What potential for
25 sentencing down the road?

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1 **MR. KRIGER:** If another Rule 35 is filed, if a Rule
2 35 Motion is filed down the road, the Court cannot consider
3 that in determining what the sentence ought to be today because
4 there is no guarantees.

5 **THE COURT:** That makes sense, doesn't it?

6 **MR. KRIGER:** Yes, it makes complete sense. So what I
7 am saying is it certainly is not unusual in this district for a
8 40 to 50 percent decrease from the guideline range
9 recommendation --

10 **THE COURT:** We have some transcript showing that a
11 Judge actually said that?

12 **MR. KRIGER:** No.

13 **THE COURT:** Forty to fifty percent because he might
14 get a Rule 35? I have never seen a Rule 35 after a 5K1.

15 **MR. KRIGER:** No. I understand that. But the
16 point -- and I have seen it in one case in 37 years. But the
17 point that I am trying make here is that if the Court was --
18 the Government typically grants 40 to 50 percent. It's not
19 unusual in a case where a defendant cooperates in a single
20 case.

21 **THE COURT:** Let me stop. Does the Government agree
22 with that proposition? Is it usually 40 to to 50 percent?

23 **MR. NEAL:** The Government's position is that the
24 appropriate reduction for Doctor Awerbuch is a 25 percent
25 reduction.

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1 **THE COURT:** I understand that.

2 **MR. NEAL:** Doctor Awerbuch with respect to that
3 cooperation which is laid out in a little bit more detail --

4 **THE COURT:** I'm not asking that question. I am not
5 asking you how you exercised your discretion. I am asking, is
6 the factual proposition that Mr. Kriger said, that the usual --
7 first of all, is there a usual 5K1 or is it very much dependent
8 on the variables that I mentioned including the variable of the
9 officer-in-charge and the Prosecutor --

10 **MR. NEAL:** I think there is a great deal of variation
11 in what the Government recommends based on a number of factors.

12 **THE COURT:** Go on.

13 **MR. KRIGER:** It certainly has been my experience,
14 your Honor, where cooperation helps resulting in a guilty plea
15 that 40 percent is not unusual.

16 **THE COURT:** Okay.

17 **MR. KRIGER:** And it's been my experience that where
18 the Government makes a 40 percent that it's not infrequent for
19 the Court to go below that recommendation. What I think is
20 important in this case, your Honor, is when you look at the
21 individual characteristics of the defendant, I don't think you
22 could find a case or a defendant that has done more for the
23 community and more for his patients despite the conduct that
24 brought him before the Court that Doctor Awerbuch has done in
25 his lifetime. And these letters -- and it's not hyperbole to

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1 say are remarkable, just remarkable.

2 **THE COURT:** Mr. Kriger, one of the reasons I was not
3 concerned about reading each and every letter is because I knew
4 your summary would highlight and emphasize the nature and the
5 quantity of the letters. And I certainly don't expect
6 receiving a packet of letters that would include anything
7 negative. So I am taking it as true all of the glowing
8 memorials that are contained in the letters so that you don't
9 have to emphasize that.

10 **MR. KRIGER:** Patients called me to ask if they are
11 allowed to speak on his behalf and I said we wrote letters and
12 I don't think it's necessary --

13 **THE COURT:** Please listen, Mr. Kriger. You don't
14 have to emphasize that. I am taking you at your word. You
15 already said that two or three times. And I see the evidence
16 of it sitting in the courtroom.

17 **MR. KRIGER:** Thank you, Judge. So, in conclusion, I
18 guess, your Honor, what I would like to say is that I gave you
19 some statistics for similarly situated people, albeit a small
20 example, but that's what it is nationwide from 2012 through
21 2016. And the sentence that I requested in this case is far in
22 excess of what those defendants received. And I find it hard
23 to believe, although I have no personal knowledge, that they
24 have done more in their lifetime than what Doctor Awerbuch has
25 done for his patients and for the community in terms of

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1 charitable work and community service. What he did was clearly
2 wrong. And he understands it. And from day one came forward
3 and took responsibility for his actions. And I think it is
4 laudable. And I think the sentence I requested is not in any
5 way out of line given the history and characteristics of the
6 defendant.

7 This case is all, at least in My mind, somewhat about
8 deterrence but really about punishment. And 20 months is not
9 an insignificant sentence. And Mr. Brenner is going to say a
10 few words because he knows Doctor Awerbuch. But also the story
11 of his one son is truly remarkable.

12 **THE COURT:** Mr. Brenner?

13 **MR. BRENNER:** Hello, your Honor. I practiced 46
14 years. My first big case was in this courtroom in 1973. So
15 words come easy to me. Also because I love Gavin so dearly
16 tears come easily to me. So you have to forgive me if I get
17 too emotional.

18 I accept what Mr. Neal has to say about the dark aspects
19 of Gavin's practice. But I would like to turn from the dark
20 aspects to the bright practice, those things that go beyond the
21 letters and to a kind of analytical assessment of who Gavin
22 really is. And doing so, I'm going to mention in passing
23 because it's not about me, that even though I practiced for 46
24 years, I spent 40 years in academic medicine and so I would
25 like to begin on a less emotional, less emotional --

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1 **THE COURT:** What is academic medicine?

2 **MR. BRENNER:** Because I think there are three things
3 I found -- there are three things I found. I talked to Gavin
4 constantly. We are like brother. Even though we are first
5 cousins we grew up in the same block. Interpreting the
6 underlying rationale for the patients' letters, not just what
7 they had to say, three factors played an important part. I
8 would like to relate those three factors to Gavin's life and I
9 would like to relate those three factors to some of the family
10 issues that I think shows his dedication.

11 Those three factors that I find in Gavin over the years as
12 a physician on the bright side is that he has one of the
13 deepest clinical knowledge bases of any physician I have ever
14 known. And that relates to a second factor. There was a book,
15 House Of God, that talked about vernacular and nomenclature
16 that physicians use outside the presence of patients and those
17 experienced in medicine. There is an expression called a
18 caboose. A caboose is a physician who is willing to treat
19 patients that no one else will, not because they have emotional
20 problems or because they complain, but because of their
21 complexity. And in all of the conversations, because patients
22 would call me, the one thing about Gavin where this clinical
23 knowledge base was so important is he was one of the few
24 physicians willing to treat patients that other physicians
25 thought were absolutely hopeless. In fact, you will note in

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1 the memo that one patient referred going to the Mayo Clinic.
2 Scott and White (ph) in Temple, Texas which is one of the great
3 clinics in this country and I think she even went to the
4 Geisinger Clinic and only found an answer with Gavin. So that
5 meant that Gavin had to look at the medical literature. He had
6 to study. This wasn't your cholesterol is too high, your blood
7 pressure is too high, your sugar is too high. They were putting
8 the pieces together. So let me just give you a little glimpse
9 of what Gavin's life was like because it both speaks to his
10 family commitment and to his patients' commitment.

11 Gavin's family lived in metropolitan Detroit. Here today
12 is my cousin, Eric, Gavin's son. My cousin, Adam, is in
13 medical school. Amy, his life partner, is here. Their family
14 was in Detroit. So Gavin, out of devotion to his family,
15 decided to live in Detroit. And I knew his chairman of
16 neurology at Wayne State when he was doing his fellowship and
17 he had many opportunities in this area but he chose Bay City
18 because it's an underserved area in Michigan where there was no
19 neurologist. So he had this sort of combined commitment to his
20 family and to Bay City which meant he drove three hours every
21 day to get to work. He would wake up at 4:15 in the morning.
22 He would get to work. He would use the medical literature. He
23 would review all those things related to the patients'
24 conditions. He would see 40 or 50 patients a day and he would
25 come home.

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1 So there was, despite the darkness, this extraordinary
2 commitment to be the one doctor of last resort. And these were
3 all nice people. I talked to so many because I knew of his
4 cousin and I jokingly said for two months I would say that
5 people have a blessed day. These were farmers, people who
6 worked at General Motors, and they would always say thank you
7 so much. I love Doctor Awerbuch. Have a blessed day.

8 And that kind of brings me to which is what is the most
9 difficult aspect which is Gavin as a family member. And the
10 starting point that is the most difficult is that Gavin had a
11 child, Drew, out of wedlock. Drew's mother shot her own
12 mother. She tried to murder Gavin. She was sentenced to ten
13 years in prison. And Gavin understood that it was important to
14 the mental health and development of Drew that Drew have a
15 relationship with his mother.

16 And I had occasion to go to prison with Gavin and Drew and
17 I recall one time that we went to prison and although Gavin's
18 principal purpose was to make sure that Drew loved his mother,
19 that he loved his grandmother, his aunts and uncles, but that
20 particular day Drew just really didn't want to go. And I
21 remember Gavin telling Drew how much it meant to his mother who
22 was incarcerated to experience his love once a month.

23 And I represented a lot of custody cases in my days in
24 legal services. But here is a woman who tried to murder him.
25 And yet Gavin had the compassion to see in her something good.

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1 He never said anything bad about Terry. He always encouraged
2 Drew to love her. My personal experience was that when Drew
3 was a young baby, I couldn't get near him. No one could get
4 near him. Drew was so disturbed that only Gavin could change
5 his diapers. Only Gavin could hold him. And as it evolved,
6 one of the most joyous moments in my life is that I would walk
7 into Gavin's house as Drew developed and I have an
8 over-developed need be loved. And Drew would run into my arms
9 and play with me and love me as a cousin. And his mental
10 development was all because of the extraordinary ability to
11 look beyond this murder attempt to the humanity both in Terry
12 and to the need of his son to have this relationship. And that
13 sort of extraordinary kind of humanity affected every aspect of
14 our family life.

15 Judge, it would be too emotional for me to talk about it.
16 But my father and my sister died next to each other. I live in
17 North Carolina. My parents had two grave sites next to each
18 other. The plot -- buried my father in North Carolina where I
19 could visit him. I did. My sister, therefore, I wanted to
20 bury in the plot next to my mother. Gavin was there for me
21 every moment. Sat Shiva at his house. Every single member who
22 touched Gavin's life has a story like that.

23 His Uncle Morris was dying of cancer. Everyday Gavin
24 would go and read to him. And the most important part is
25 Jerry, his father, was more important to me than anyone other

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1 than my parents who dearly loved me. And Jerry developed
2 dementia. And after all of these hours at work, 40 or 50
3 patients a day, at night sometimes I would go with Gavin when I
4 was visiting and he spent this time doing everything for his
5 father. I remember his father was having difficulty eating and
6 he prescribed Remeron (ph), an anti-depressant, to increase
7 appetite. He was low in energy and he prescribed testosterone.
8 And although Jerry had dementia, because I went further back
9 with Jerry than anybody who was alive, he had my number and we
10 would call and I would call Jerry and, yes, you know, he would
11 repeat things over and over and over, but somehow I was the
12 only one who could connect with Jerry because with dementia you
13 have long time memory. So we would joke about all those things
14 I did as a child. But the one thing that Jerry said over and
15 over and over again, you know, I am okay because Gavin is
16 taking care of me.

17 And I am going end on something that Mark didn't think was
18 a very good idea but it's important to me and I ask for an
19 exemption from the Court if you think it's inappropriate
20 because my love for Gavin is so decent. Our grandfather was a
21 man of meager means. He had a chicken and fish store in the
22 inner city. When he died, you couldn't get into the funeral.
23 All my life I kept on hearing grandpa was the kindest man
24 anyone knew. And I will tell you from my heart that the
25 kindest person I have known in my life is my beloved cousin

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1 Gavin. And I know he has committed criminal offenses and human
2 nature is complex, and I ask your Honor to consider that the
3 world in many ways is so bright and beautiful and I know that
4 this audience and all of the family would say the same thing.
5 Gavin Awerbuch is the kindest person we have all known. And I
6 apologize for his criminal conduct and ask that you consider
7 that in fashioning a sentence that is fair and just because I
8 love him so dearly. Thank you.

9 **THE COURT:** Thank you. Do have you anything to say
10 on your own behalf?

11 **THE DEFENDANT:** Yes, your Honor, I do. I am a little
12 nervous so I am going to read from my notes.

13 **THE COURT:** That's perfectly okay.

14 **THE DEFENDANT:** Thank you for the opportunity to
15 address the Court.

16 **THE COURT:** Please use the microphone.

17 **THE DEFENDANT:** Thank you for this opportunity. It's
18 simply impossible to put into words how sorry I am and how much
19 I regret the conduct that brought me here today. And I have
20 written a letter and there are letters of support from others
21 who detailed how ashamed I am for what I have done. I have
22 hurt so many people and have taken advantage of the health care
23 system that is overburdened and depends on doctors in being
24 honest when billing and prescribing pain medicine.

25 I do understand that prescribing Subsys put those patients

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1 at risk. I tried to make amends by agreeing to painful
2 restitution and forfeiting additional money that I received due
3 to my conduct and also by agreeing to testify against -- and to
4 testify. I want to apologize to my patients who depend on me
5 for their care. I still get calls from many of my patients
6 telling me that he have been unable find a doctor to replace me
7 or they will call me asking for medical advice. And I feel
8 very guilty about the fact that my conduct has resulted in some
9 of those patients not getting the adequate medical care they
10 truly need.

11 My office and home were initially raided by the FBI in
12 2011 and then they were raided again in 2013. Amy was at home
13 during the raids. And this investigation and the case against
14 me has caused her and my family a great amount of emotional
15 stress. And I want to apologize to my family for the stress
16 that I caused them.

17 I also want to apologize to my former employees. Many
18 have not been able to find jobs and have having financial
19 burdens. Not only were my assets frozen but all the retirement
20 accounts were frozen which included retirement benefits of the
21 employees. I have been told that once my forfeiture is paid
22 off the employees will get their benefits. But many of them
23 have struggled and I feel really bad about that.

24 My conduct has also resulted in the loss of my medical
25 license which has prevented me from continuing in my life's

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1 passion of working as a physician. To help me determine the
2 reasons for my actions, I've worked with a psychologist and
3 psychiatrist to better understand my character flaws and I made
4 great strides with therapy to assure myself that I will never
5 act in this manner again.

6 I am now looking towards the future. I am hoping that you
7 can see the good in me and not judge me by my actions alone in
8 this case. I am almost 60 years old and will hopefully have
9 many years ahead of me after completing my sentence. I would
10 like to continue with charitable and volunteer work which has
11 been another of my life's passions. The concept of giving back
12 has been instilled in me both by my parents and grandparents
13 and it's been a part of my life since I was a child. If I am
14 ever able to obtain my medical license again and work as a
15 physician again, I would like nothing for than once again
16 provide free care to indigent patients. This was extremely
17 rewarding to me and hopefully I will be able to continue once
18 again.

19 I also would like to continue teaching and mentoring
20 medical students. I am certified in addiction medicine, would
21 like to counsel people with addictions. Amy and I always
22 planned on doing medical missions after retirement and we would
23 like to somehow get involved in that. And I hope that goal
24 will still be attainable.

25 I would also like to speak to medical groups and let

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1 doctors know what can happen in they engage in fraud and if
2 they prescribe unnecessary pain medications and how the
3 consequences will not only prevent them from practicing their
4 profession but the way it affects so many others like their
5 families and patients. I am also looking forward to spending
6 time with my children and grandchildren. I hope I can be an
7 inspiration and share my love for charitable work and
8 volunteerism and instill in them the importance of giving back
9 to society. Thank you.

10 **THE COURT:** Anybody else have anything to say?
11 Government? Defense lawyers?

12 **MR. NEAL:** Nothing from the Government, your Honor.

13 **MR. KRIGER:** The only thing I forgot to mention, your
14 Honor, is he never turned down a patient that didn't have money
15 ever. And the employees all attested to that.

16 **THE COURT:** All right. Are we ready? Ready, Doctor?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** All right. Some of this is scripted and
19 some of it -- most of it is not. The beginning is where I
20 summarize the guidelines and the congressional factors. The
21 rest has a portion that is scripted. We have all agreed what
22 the guideline range is. And, by the way, I should grant the
23 5K1 motion. I assume, Mr. Kriger, you have no objection.

24 **MR. KRIGER:** No objection, your Honor.

25 **THE COURT:** All right. So the guideline range before

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1 the 5K1 is 70 to 87 months. And with the 5K1 the guidelines
2 become even more advisory so that almost anything I give below
3 the guilty plea agreed to amount, the Government can't appeal
4 because they have made and exercised their discretion to give
5 value to the cooperation that you provided. But I am not bound
6 by whatever percentage they used to evaluate that. That is my
7 call. And that is, of course, an important factor as are the
8 guidelines.

9 So I start with the guidelines and it's 70 to 87 months.
10 And then I factor in the 5K1 over here to the side. It's in my
11 mind. And I have in my hand a list of the congressional
12 factors that I am to consider, some of which are pretty obvious
13 and some of them are less so.

14 The goal of federal sentencing now after I have been given
15 more discretion is to impose a sentence sufficient but not
16 greater than necessary. Sounds good, but it leaves a lot of
17 discretion to me. And the source of that quote is the Supreme
18 Court decision from 2007 called Kimbrough, K-i-m-b-r-o-u-g-h.

19 And the first factor is the seriousness of the offense.
20 And there are two Counts here. And one Count is a 20 year
21 felony and the other Count is a ten year felony. Just using
22 the word felony tells me it's a serious offense. Twenty years
23 is near the top of the range of felonies and ten years is
24 closer to the middle. Both are substantial felonies and that
25 is a factor that I consider.

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1 Now, in terms of general deterrence, that is, will the
2 sentence that I impose deter other people? And I have trouble
3 relying on what I do as being a deterrent because this showing
4 up of a number of people for the sentencing is rare. It's not
5 unusual. It's rare and it's welcomed. But you are not the
6 people who have to be deterred. The people who have to be
7 deterred in this kind of case are primarily people in the
8 medical field or who can work with people in the medical field
9 to both distribute drugs and defraud Medicare. So the
10 potential bad doctors are going to be more deterred in this
11 case by the work of the federal agents and the United States
12 Attorney's office. That is, if somebody is contemplating doing
13 this and they know that a colleague or another doctor has been
14 caught, that is much more likely to deter them, especially when
15 we are talking about what is predominantly an economic crime.
16 And the word greedy has been used. Not only has Doctor
17 Awerbuch been greedy. Self admitted. It's obvious. And
18 anyone who wants to do this kind of crime and has the
19 qualifications is almost, by definition, well paid to start out
20 with. And there is no reason -- it's not a survival thing.
21 It's a greed thing to get involved.

22 So in terms of general deterrence, little that I say here
23 will deter other people. But the case has had some deterrent
24 effect before it got to this level.

25 In terms of special deterrence, it's hard for me to place

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1 myself in a situation where a man has done so much for free
2 helping people without money or limited means and at the same
3 time has a decent income from legitimate purposes, practicing
4 his profession associated with a hospital, St. Mary's in
5 Saginaw. And so this extracurricular criminal activity was not
6 a function of need but more a function of want. And that
7 obviously doesn't help you in my rationalization. But it
8 puzzles me because you are apologizing which is usually a
9 symptom of taking responsibility. The guidelines gave you
10 credit for taking responsibility. But you didn't need to do
11 this.

12 And so in terms of deterring you, there has to be an
13 element of punishment involved to remind you that it's not a
14 zero sum game where if you get caught you give back the money
15 because that would make it into Las Vegas and we don't want
16 that.

17 In terms of dangerousness, obviously, you are not
18 dangerous to any individual as attested by all of the people
19 who came here who said you were the opposite of being
20 dangerous. You are dangerous to the system but that's taken
21 into account because of the severity of the felony statutes.

22 And in terms of disparity, your attorney has done a good a
23 job as can be done to try and show a pool of people who are
24 similarly situated. And as I have said two or three times
25 today, there is no such pool. There is a pool of people who

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1 have been convicted of one or both of these crimes, but their
2 backgrounds are all different. Their motivations are
3 different. And, again, if there were such a pool and it could
4 be mathematically calculated, I wouldn't be struggling with the
5 discretion I have. And, at this point, I am still not sure
6 exactly what sentence I am going to impose but it is going to
7 be prison time and it's going to be somewhere probably between
8 the 20 months and the 52 months. And as I'm explaining to you
9 I am also thinking to myself how much time would be
10 appropriate. So the disparity argument in this case doesn't
11 hurt you. It doesn't really help you.

12 Care and treatment. You mentioned something and I am
13 going to mention it now. One of the factors is that whatever
14 time you spend in prison, they should make available to you
15 mental health counseling and treatment. You already referred
16 to the problems you are having and are wise enough to have
17 sought professional advice and I want that to continue.

18 And I already talked about your prior record in the sense
19 that you have no prior criminal record and in the sense that
20 while your attorney would say, and this is acknowledged by the
21 prosecution, you have done some extraordinarily positive things
22 which is all part of your record. But as I have indicated,
23 that tells me that you should have known better than to do
24 this. This is the opposite of doing positive things.

25 Your work record is obviously good because that included

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1 your volunteer work. But, again, it's contradicted by what you
2 did as a professional in this case and what you pled guilty to.

3 Your attitude I already discussed. I would like to think
4 and I would bet because of your age and trauma that you have
5 endured and have inflicted on your loved one's family and
6 patients that you will not participate in something like this
7 again. And it becomes even less likely that you will because I
8 would anticipate you are not going to get your license back and
9 if you do get it back, it will be on very severe supervision.

10 In terms of your financial condition, I already mentioned
11 the fact that you are doing restitution and contributing to
12 payment for the loss and more, obviously helps you. Again, it
13 is not a situation you can buy yourself out of.

14 And as far as I can tell from the Presentence Report, your
15 health, other than your mental health, is good. And your
16 mental health is not at, again, according to the Presentence
17 Report, at a danger level. You are not severely depressed and
18 so on. But that will all be evaluated when you are in prison.
19 And I am taking into consideration your age. And I am ready to
20 impose sentence if you are ready.

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** As to Counts One and Two of the
23 Information, pursuant to the Sentencing Reform Act of 1984, the
24 Court, considering the sentencing guidelines which I've already
25 discussed and the statutory factors from Congress set forth in

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1 18 USC Section three 3553, paren A, commits the defendant,
2 Doctor Awerbuch, to the custody of the United States Bureau of
3 Prisons for a term of 32 months on each Count to run
4 concurrently. That is two years and eight months. I recommend
5 a designated facility with a mental health treatment program.
6 Mr. Kriger, remind me where he wants to be sent.

7 **MR. KRIGER:** I am going to address that when you are
8 all done.

9 **THE COURT:** No. You're going to address it now.

10 **MR. KRIGER:** Your Honor, I have been trying to get a
11 hold of the Bureau of Prisons to see -- his son is in medical
12 school in Miami. And his partner, former wife, also resides in
13 Miami part-time. But he doesn't live in that district. And
14 I'm trying to get a hold of the Bureau of Prisons to see if I
15 can get him designated down there and I have not gotten an
16 answer yet, if they will do it outside this region.

17 **THE COURT:** That's something that our department
18 would find out for you in a minute.

19 **MR. KRIGER:** Okay. Because I called.

20 **THE COURT:** If he wants to go to Miami I will
21 recommend it and I have a commitment from the Bureau of Prisons
22 if they can't do it, they will inform me. Since they made that
23 commitment about a year ago, I only had one can't do letter.

24 **MR. KRIGER:** The other option, your Honor, I was
25 going to say --

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1 **THE COURT:** The answer to your question is, yes, they
2 can do it. The other question is, will they do it? And I am
3 not sure they will answer that.

4 **MR. KRIGER:** Could I ask for just seven days before
5 you do the commitment to try to finalize this. And I will
6 certainly notify the Court of a requested designation.

7 **THE COURT:** Let me ask you this. Do you have an idea
8 of how many federal prisons there are in the state of Florida
9 because I don't know.

10 **MR. KRIGER:** There is Miami, and there is Pensacola,
11 the two we are looking at.

12 **THE COURT:** Pensacola is 400 miles away.

13 **MR. KRIGER:** Right. The other space is Morgantown.
14 If you could just give me -- he wanted to think about once I
15 found the options. If you can give me seven days, I will
16 notify Mr. Lang or even if you can give me 48 hours.

17 **THE COURT:** 48 hours is okay because we won't have it
18 back by then. But I am shaking my head because that's the
19 first thing on my local local --

20 **MR. KRIGER:** I know that and I was aware of that.
21 That is why I have been trying to figure that out.

22 **THE COURT:** Even without those local local rules, my
23 practice was at least geography. Have you gone into the
24 question of programs that would be available to him?

25 **MR. KRIGER:** Yes. I was going to ask that you

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1 recommend the RDAP program. If you notice in the Presentence
2 Report --

3 **THE COURT:** Is that because he has a drug problem or
4 because he wants to get out six months early?

5 **MR. KRIGER:** Because it has an alcohol program.

6 **THE COURT:** Stop. You don't have to tell me to look
7 at anything. You are an officer the court. I believe what you
8 say. I just wish you -- what are the security levels at Miami
9 or Pensacola?

10 **MR. KRIGER:** They both have federal prison camps. So
11 the only other place we're considering --

12 **THE COURT:** I don't want to hear your ruminations
13 about where. I will give you 48 hours to tell me where.

14 **MR. KRIGER:** Thank you, your Honor.

15 **THE COURT:** And I will recommend comprehensive drug
16 program. And that, by the way, my recommendation, even if it
17 were followed, they will do their own evaluation. And even if
18 you are evaluated to qualify, because of our budgeting things
19 nationally and before -- well, two or three years ago we were
20 told that 70 percent of the people who qualify by their
21 evaluation get into the program. But if you qualify you don't
22 have any history of recent guns or violence. And I wish you
23 luck.

24 Upon release from imprisonment, you will be placed on
25 supervised release for a term of three years per Count to run

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1 concurrently. It is further ordered you pay a special
2 assessment of a hundred dollars per Count which is a total of
3 two hundred dollars. And the restitution we have already
4 discussed. And the amount of \$3,141,267 and no cents shall be
5 ordered forthwith. And as we have heard, that has been taken
6 care of. I am not imposing a fine. I am not charging you for
7 the costs of imprisonment or the costs of supervision due to
8 your financial situation. And the restitution shall be divided
9 between Health and Human Services Medicare Trust Fund of
10 \$1,916,694 to \$1,224,573.

11 You will not be required to participate in the Inmate
12 Financial Responsibility Program in prison for two reasons.
13 One, as I understand it, it could take up to 25 percent of your
14 earnings in prison to teach you how to spend your own money. I
15 don't think you need any advice on how to spend money, one.
16 And, two, taking 50-cents of two dollars isn't going to help
17 you anyway other than to perhaps help your teeth and you won't
18 buy as much candy. But so if they say to you if you don't take
19 this program, you can't do another program, it then becomes
20 your decision if you are going to admit it to that or submit to
21 that. Okay.

22 Mandatory drug testing is ordered. While on supervision
23 you shall abide by the standard conditions as adopted by the
24 United States District Court in the Eastern District of
25 Michigan and shall comply with the following special

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1 conditions. You shall provide -- due to your history of mental
2 health and substance abuse, you shall participate in a program
3 approved by the Probation Department for mental health
4 counseling. If necessary, you shall not use or possess alcohol
5 in any consumable form, nor shall you be in the social company
6 of any person who you know to be in possession of alcohol or
7 illegal drugs or frequent an establishment where alcohol is
8 served, the consumption on the premises, with the exception of
9 restitution. You shall participate in a program approved by
10 Probation for substance abuse which may include testing to
11 determine whether you reverted to the use of drugs or alcohol
12 if necessary. If you have not made full restitution by the
13 time you get out, part of your supervised release will be to
14 make monthly installment payments on any remaining balance at a
15 rate and schedule recommended by the Probation Department and
16 approved by the Court. You shall not incur any new credit
17 charges or open additional lines of credit without the approval
18 of the probation officer unless you are in compliance with the
19 payment schedule. And you shall provide the probation officer
20 access to any requested financial information. Do have you any
21 questions?

22 **THE DEFENDANT:** No, your Honor.

23 **THE COURT:** Any objections from the Government?

24 **MR. NEAL:** No objections, your Honor.

25 **THE COURT:** Defense?

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1 **MR. KRIGER:** No objections.

2 **THE COURT:** Stop. You answered by question.

3 **MR. KRIGER:** No objections.

4 **THE COURT:** I am not done. You have a right to
5 appeal. If you choose to appeal and cannot afford it, the
6 Court will provide you with the forms. The case manager and
7 your attorney will help you complete them. If there are costs
8 such as attorney fees, transcripts, or the like, a filing fee
9 at the Sixth Circuit, the Court -- and you couldn't afford
10 it -- the Court will take care of them. I'm required to tell
11 you that but I am also, out of a sense of reality, required to
12 tell you that as I recall your Rule 11 Agreement, you have
13 waived your right to appeal if you are sentenced is under 86
14 months or 87 months, whatever the cap was. And, therefore, if
15 you were to exercise the first right I told you about when the
16 papers were filed with the Sixth Circuit they will look at the
17 Rule 11 Agreement and more likely than not dismiss your appeal.
18 Now, do you have any questions?

19 **THE DEFENDANT:** No, I don't, your Honor.

20 **THE COURT:** Let me give you a short preview. You are
21 going to prison. You are a first timer. Your view of prison
22 as is most of ours is influenced by what you see in the movies
23 and on TV. And sometimes that is true. A few years ago I have
24 been interviewing prisoners when they get out and I have not
25 had one person report that that happened to do them but I am

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1 not naive enough to know that they would report that. My
2 advice is to take your time, be skeptical of anything that
3 sounds too good to be true. And your life skills will help you
4 a whole lot in discerning what is going on.

5 The other bit of advice, if you are going to meet people,
6 especially if you end up at a camp, who have done just as bad
7 or worse things than you and have gotten less time, and you can
8 be angry about that. You can be angry about where I exercised
9 my discretion. That is normal. But you cannot let it
10 interfere with the positives when you get out of the prison
11 whether it's learning about people that you probably already
12 know from your prior experience or doing a job that helps
13 people in prison. That won't be your first job. More likely
14 than not it will be more of a cleaning job. But one of the
15 reasons I ask that the attorneys look into more than just
16 geography is because each prison has a group of the same
17 programs and then they have specialty programs. And we have
18 actually have a couple books in the library, one written by a
19 defense lawyer and one by the Bureau of Prisons that will
20 catalog and categorize what is going on in each prison so you
21 can get something out of it. And if there is not a program and
22 there is no congruence between program and geography, you can
23 create your own program in terms of literature, art, whatever
24 you are interested in. And they do have libraries and with the
25 support from outside, books can be sent in.

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1 The key thing is when you get up every morning and
2 especially at the beginning you will be very angry. You've got
3 to say it yourself, is this going to be a positive day or a
4 negative day? And if you, as you are there and get used to it,
5 you realize there is no value in negative days other than that
6 day will be gone. So you are one day closer to release. If
7 you do the positive thing that day will be gone and you might
8 get something that can you use when you get out or something
9 that satisfies you, whatever your interests.

10 I wish you luck. You've now finished this segment of your
11 life and you are right. When you get out, you will be probably
12 62. And you will have a lot of years in front of you in terms
13 of doing something that satisfies you. And it will more likely
14 than not not be your old passion of medicine but you might find
15 something more than satisfying but less than passionate. Good
16 luck.

17 **THE DEFENDANT:** Thank you.

18 **THE COURT:** Mr. Kriger?

19 **MR. KRIGER:** Your Honor, I would ask that you waive
20 the cost of incarceration given the forfeiture as part of the
21 judgment. And also I would like to talk about a reporting
22 date. Mr. Neal and I have talked when we mentioned to you in
23 chambers --

24 **THE COURT:** Stop. I already waived the costs of
25 incarceration.

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1 **MR. KRIGER:** I didn't hear that.

2 **THE COURT:** I waived the costs of supervision and the
3 fine. So you and Mr. Neal have agreed. Tell me what the
4 agreement is and I will see if I approve it or not.

5 **MR. NEAL:** Yes, your Honor. Why don't we simply let
6 the Bureau of Prisons select a turn-in date and Mr. Kriger and
7 I will discuss whether that's appropriate.

8 **THE COURT:** So you are not objecting to continuance
9 of bond?

10 **MR. NEAL:** No objection to continuation of bond.

11 **THE COURT:** Is that what you want, Mr. Kriger?

12 **MR. KRIGER:** Yes, your Honor.

13 **THE COURT:** We are done, unless have you something
14 else.

15 **MR. KRIGER:** I am finished.

16 **THE COURT:** Thank you.

17 **MR. KRIGER:** Thank you, your Honor.

18 **MR. NEAL:** Thank you, Judge.

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C E R T I F I C A T I O N

I, Lawrence R. Przybysz, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Lawrence R. Przybysz
Official Court Reporter

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